

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

ACHATES REFERENCE
PUBLISHING, INC.

v.

SYMANTEC CORPORATION, et al.

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Case No. 2:11-cv-294-JRG-RSP

ORDER

Before the Court is Plaintiff Achates Reference Publishing Inc.'s Unopposed Motion to Stay Pending *Inter Partes* Review (Dkt. No. 371). The Court held a telephonic conference to discuss the merits of staying this case during the pendency of proceedings in the U.S. Patent and Trademark Office.

By way of background, this case was filed on June 20, 2011. An amended complaint was filed on June 20, 2012, naming Apple, Inc. as an additional defendant. Apple filed petitions for *inter partes* review on December 14, 2012. The PTO has not yet acted on the petitions. The Court has issued a claim construction order, the pretrial conference is set for July 22, 2013, and jury selection is set for August 5, 2013. Fact discovery is complete.

At this late stage in the case, Achates requests that the case be stayed during the pendency of any proceedings before the PTO. Defendants do not oppose a stay. Achates argues that if the PTO grants *inter partes* review, the PTO will be required to complete its review by May 2014. The parties appear to agree that the litigation estoppel provided by statute would only apply against Apple, and that it may only be effective after all appeals of the PTO's decision are exhausted.

The Court indicated that it believes that granting a stay at this point in the proceedings may not save much effort unless all parties to the stay are bound by the outcome of the *inter*

partes review. One defendant indicated that it was willing to stipulate to be so bound. The Court agreed to give the other defendants time to consider the issue before the Court rules on the instant motion, as the Court is considering a stay that applies only to the parties who would be bound by the outcome of the *inter partes* review.

Accordingly, the parties are ORDERED to file a response to Achates' motion by no later than April 10, 2013. The response should indicate whether or not that party stipulate that it (1) agrees to be held to the same estoppel as will apply against Apple resulting from the *inter partes* review, and (2) agrees that the estoppel will apply as soon as the PTO issues an appealable determination.

SIGNED this 4th day of April, 2013.


ROY S. PAYNE
UNITED STATES MAGISTRATE JUDGE